S. HRG. 102-13

# PROPOSED SALE OF THE YOSEMITE PARK AND CURRY CO.

## HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON THE

PROPOSED SALE OF THE YOSEMITE PARK AND CURRY CO. FROM MCA, INC. TO THE NATIONAL PARK FOUNDATION

FEBRUARY 21, 1991

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# PROPOSED SALE OF THE YOSEMITE PARK AND CURRY CO.

THURSDAY, FEBRUARY 21, 1991

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 2:05 p.m., in room SD-366, Dirksen Senate Office Building, Hon. Dale Bumpers, presiding.

## OPENING STATEMENT OF HON. DALE BUMPERS, U.S. SENATOR FROM ARKANSAS

Senator BUMPERS. The purpose of today's hearing is to examine the agreement announced on January 9, by Secretary Lujan under which ownership of the Yosemite Park and Curry Company would be transferred from MCA to the National Park Foundation.

Last year this subcommittee held 2 days of oversight hearings on the "Concessions Policy of the National Park Service." While I still believe major changes need to be made in the Concessions Policy Act, that is not the purpose of today's hearing.

In the near future I plan to introduce legislation to make significant concessions reforms. Once the bill is introduced, I will hold hearings at which time the merit of current concession policies, as well as possibilities for improvement can be debated.

And I look forward to working in the coming months with Secretary Lujan and others to bring about these much needed changes to the program.

The purpose of today's hearing is to give this committee the opportunity to take a closer look at the agreement between MCA, the National Park Foundation and the Department of the Interior to transfer control of the Yosemite Park and Curry Company.

While I am supportive of this agreement, the term sheet agreed to by the parties is worded in very broad terms. And there are several provisions that I would like to examine in greater detail.

Nonetheless, I believe this agreement gives the Park Service a unique opportunity to restore competition to a major concessions operation. I want to commend Secretary Lujan for his role in reaching this agreement, and to acknowledge the willingness of both MCA and the National Park Foundation to enter into what appears to be a good deal for all parties.

We are privileged today to have Secretary Lujan and representatives from MCA and the National Park Foundation with us. And I welcome you all to this subcommittee. I look forward to hearing your testimony and learning more about the details of the agreement.

We are also honored to have the distinguished Chairman of the full committee here, Senator Johnston.

Senator Johnston, do you have any statement?

## STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. Thank you, Mr. Chairman, and I am very pleased that you are holding these hearings on a vital issue of importance to all of us, as the whole National Park policy is. And I look forward to working with you on legislation to improve the situation.

[The prepared statements of Senators Johnston, Wallop, and Murkowski follow:]

PREPARED STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

Like many Americans, I was very distressed several months ago to read the press reports concerning the sale of the Music Corporation of America, the parent company of Yosemite Park and Curry Company, to the Japanese conglomerate, Matsushita (MAT-SNOOSH-TA) Electric Industrial Co., Ltd. While I could understand the business rationale behind the acquisition, I was frankly very concerned about the prospect of foreign ownership of visitor facilities and buildings in Yosemite National Park. Yosemite is one of America's most highly visible and best known natural resources, and I feel strongly that foreign ownership of the significant possessory interest in the infrastructure at Yosemite is not in the public interest.

Fortunately, an agreement has been reached in principle between the Department of the Interior, MCA, and the National Park Foundation which has the potential to resolve this situation in a very satisfactory manner. At the very least, the agreement seems to insure that ownership of these facilities will remain in American hands after 1993 when the existing contract expires, and that the renewal of this contract will be subject to vigorous competition which will benefit the park and the park visitor.

This hearing will provide an important opportunity for the Committee to learn more about this unprecedented agreement and explore some of the details of the proposal. I am aware that many of the particulars of the agreement remain to be worked out. I think that this is an appropriate forum for the Committee to examine some of the important issues which need to be addressed before the proposal is finalized. I can assure you that many of us on this Committee are watching the development of this agreement very carefully and plan to follow its implementation very closely.

I appreciate the participation of all the witnesses here today and look forward to hearing the testimony.

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PREPARED STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM WYOMING

Mr. Chairman, concessions in National Parks provide a service required by the Park visitor. The vast majority of Park visitors would rather stay in the Park if possible. Parks were set aside for the benefit and enjoyment of the people. The concessioners are businessmen; it is their livelihood, they fully understand the need to protect the resource, for without it there is no Park and no basis for that livelihood. They are committed to maintaining both the natural and cultural resources, the lodges, the stores and services that have been a part of the Park System since its very beginning.

At present, it seems that the overall system is working from both concessioner and Park Service points of view. There exits, in most cases, a strong commitment to

quality visitor service through the partnership established between the National Park Service and the private sector concessioner.

The Yosemite Park and Curry company has been one of the leaders and a shining light in addressing the needs of the operation, to complete building improvements programs, infrastructure improvements and other services that have been required to ensure that the needs of the operation and service to the Park visitor were met.

Unfortunately, when the parent company of Yosemite Park and Curry Co., Music Corporation of America, was purchased by a foreign firm, it compelled sensational headlines, rather than a true and accurate portrayal of the situation.

I was disappointed, to say the least. I know of no law which prohibits a foreign firm from operating a concession in one of our National Parks, or for that matter, in our National Forests. There might have been possible benefits from the immediate access to the resources of Matsushita. Instead, the false premise that the Japanese were about to completely control Yosemite National Park dominated the debate.

Perhaps, with Matsushita resources, an innovative transportation system, seriously needed in Yosemite Valley, would have been greatly enhanced. They may have been the best possible partner to have in this business. Unfortunately, we will never know—the opportunity is lost.

Mr. Chairman, while not precisely the same, the Department of Agriculture, under the National Forest Ski Area Permit Act of 1986, has issued permits at Steamboat Springs, Colorado, and Heavenly Valley, California, to one Japanese firm; another to a Japanese firm at Breckenridge, Colorado; and yet another at Alyeska, Alaska; not to mention that Copper Mountain, Colorado, is owned by a subsidiary of a Canadian oil company.

There have been no reports to my knowledge that foreign ownership has adversely affected the operation of these facilities. Moreover, the terms of the contracts are for the most part between 30 and 40 years in duration.

I have always been a strong opponent of protectionism, for it is ultimately a destructive tool. Free trade between nations is very important to our economic virility; and actions like this may only exacerbate the problem.

In closing, I want to make a personal reflection. A United States Senator once remarked:

> Now, under that provision any alien can go into the State of Wyoming, purchase all the property, real, personal, and mixed, that his means will allow, and shut out the people of the United States from it. No provision can be broader than that. Its intention is plain beyond any sort of question; and every Senator who votes for the admission of this State with that provision in the bill of rights says to the people of Europe, to the alien capitalists, to their nomadic noblemen who come here and buy vast possessions on which to settle their younger sons, "Wyoming is open to you, and if your money holds out you can buy two-thirds of the entire State.

Those remarks were made over a hundred years ago by Senator Vest of Missouri as he spoke on the floor against Congress admitting Wyoming into the Union.

History has shown his concerns to be much ado about nothing—I suspect that this debate, too, may travel that road.

Mr. Chairman, I have several other areas of serious concern that I will address once the witnesses have had the opportunity to testify. I would also like to welcome my good friend and colleague Senator Murkowski as the new Ranking Republican on the Subcommittee.

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PREPARED STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Mr. Chairman, there are several issues which cause me concern with the proposed sale of the Yosemite Park and Curry Company from MCA, Inc., to the National Park Foundation.

First and foremost, I have long been an advocate and supporter of foreign investment within the United States. Foreign concepts, ideas and investments have contributed to the health of the nation since its inception. Recent press reports over a possible Japanese acquisition of the Yosemite Park and Curry Company were in part untrue, misleading and unfortunate.

I do not want to dwell on the Japanese bashing that has taken place, for it will serve no purpose to those who possess such a narrow view of the world.

Alaska has a number of foreign operated vessels that ply the coastal waters of my state, many of which enter Glacier Bay National Park and Preserve under Park

Service concessions permits. As a result of press reports, bills have been introduced in the other body to exclude foreign operation of Park concessions.

During the January 9, 1991, House hearings on the Yosemite agreement, a couple of members noted that they knew of no foreign countries that allowed foreign interest to operate facilities within their National Parks. They failed to look north to Parks Canada. Let me cite just one example of several—at Banff National Park, three hotels are operated by the Japanese, one by an American firm, and two by European firms. I trust that in the future, we will be able to approach the operation of concessions by foreign interests with a more reasoned approach.

The sale of the Yosemite Park and Curry Company to the National Park Foundation is essentially accomplished. I am not convinced that the rationale for the sale nor the specific agreement is in the best interest of the government, taxpayer and/or park visitor.

The Concessions Policy Act provides that the Secretary of the Interior shall grant a possessory interest to concessioners in buildings or facilities which they buy or build. This concept was developed because it was impossible for the concessioners to obtain long-term financing or investment in facilities they could not own in fee. With possessory interest, concessioners as Yosemite Park and Curry Co. have been able to invest millions of dollars in park facilities.

Regarding the preferential right of renewal, Congress provided that at the end of its contract, a satisfactory concessioner shall be entitled to a preferential right of renewal, generally defined as the right to match a competing offer. This provision has encouraged good operation, long-term investment, high quality maintenance, and stability of work force. Without some assurance of protection against cutthroat competition, which might offer a higher rate of return to the government at the cost of service to the visitor, or protection to the resource, an incumbent concessioner would find it difficult to invest a quality service maintenance and personnel.

I fear with the Yosemite agreement that we are sending the wrong signal to other concessioners—that we may no longer be concerned with reasonable prices and quality service, but that we want to maximize more of a return to the Treasury. Unfortunately, this flies in the face of the basic tenets of the Concession Policy Act.

The objective of concession policy should be how to provide visitors to units of the National Park System with the services which are essential to and an explicit part of the basic mission of the National Park Service, which is ". . . to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same . . .", not on some racil or other classification as to who provides those services best.

Mr. Chairman, I have other areas of concern. In the interest of time, I will have several questions to submit for the record.

Senator BUMPERS. Thank you very much, Mr. Chairman.

Secretary Lujan, we are pleased to have you with us. Please proceed with your testimony.

## STATEMENT OF HON. MANUEL LUJAN, JR., SECRETARY, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JAMES RIDENOUR, DIRECTOR, NATIONAL PARK SERVICE

Secretary LUJAN. Thank you very much, Mr. Chairman and Senator Johnston. And it is a pleasure to be here.

I have with me this afternoon Mr. Jim Ridenour, the Director of the National Park Service; of course, Leonard Silverstein, who is our mainstay in seeing that we get a good deal, which we have; and of course, Robert Hadl, who is with MCA. And we are happy to have them with us.

Mr. Chairman, it is indeed a pleasure to appear before you today to address the issue of concessions operations within Yosemite National Park. And I am, of course, delighted to be joined by these gentlemen here.

I am pleased to report that the National Park Foundation, in the spirit which the Congress envisioned when it created the Foundation in 1967, and in full consultation with its legal counsel, has reached an agreement with MCA to acquire 100 percent of MCA's

Yosemite Park and Curry Company stock at $49.5 million, plus compound interest when the company's current contract with the National Park Service expires in September 1993.

The purchase price and the accrued interest will be paid from revenues generated by concessions operations after transfer of ownership. With such a financing agreement, no additional funds will be required to complete this purchase. And thus, I am pleased to report the Department will request no additional appropriations authority to complete this transaction.

Furthermore, we estimate that the revenues generated by these operations will be of such magnitude as to assure that implementation of the goals of the Yosemite National Park General Management Plan will be significantly enhanced.

A second key element in this agreement provides the Yosemite Park and Curry Company's possessory interest, which is included in the agreement between MCA and the Foundation, will be extinguished as part of the transaction. Further arrangements call for YP&C to continue to operate the concessions in Yosemite over the remaining life of the contract with the National Park Service.

At the same time, however, MCA has agreed to donate $6 million to the National Park Foundation to further the interests of the National Park System.

And finally, at the end of the present contract, the National Park Foundation has agreed to waive its preferential right of renewal, thereby enabling subsequent bidders to compete on an even playing field for this contract. In this regard, the Director and I will take active measures to avoid even the appearance of a conflict of interest on this issue as it pertains to our statutory duties as officers of the Park Foundation and in our capacities as officials of the Department.

As you may recall, during the last year, Mr. Chairman, I set out five principles to guide our efforts at improving concession management in the Park System. They are: (1) above all other goals, to protect park and natural and historic resources; (2) to provide quality visitor services at reasonable cost; (3) to provide concessioners with a reasonable opportunity for profit; (4) to provide a fair return of fees, investment and services to the Government; and (5) to promote competition in concessions contracting.

I am pleased to report, Mr. Chairman, that the agreement reached between MCA and the Foundation will assure us that these five principles will all be accomplished. This significant achievement could only have occurred with the full cooperation and good faith of MCA, of the National Park Foundation, and all the parties to the agreement.

Mr. Chairman, I am proud and pleased to have been given the opportunity to participate in this historic agreement. I can assure you and all Americans that all parties have negotiated hard, well, and in good faith to ensure successful future management and operations of one of this country's magnificent wonders, Yosemite National Park.

And now, Mr. Chairman, I believe some of the others have some statements that they would like to make. And then we would proceed on to questions.

[The prepared statement of Secretary Lujan follows:]

PREPARED STATEMENT OF HON. MANUEL LUJAN, JR., SECRETARY, DEPARTMENT OF THE INTERIOR

Mr. Chairman, it is indeed a pleasure to appear before you today to address the issue of concession operations within Yosemite National Park. I am delighted to be joined today by representatives of MCA, Inc., owner of the Yosemite Park and Curry Company (YP&C), and the National Park Foundation. I believe our combined appearance before you today will usher in a new chapter in concessions management in Yosemite, indeed in the National Park System.

I am pleased to report that the National Park Foundation, in the spirit which Congress envisioned when it created the Foundation in 1967 and in full consultation with its legal counsel, has reached an agreement with MCA to acquire 100 percent of MCA's Yosemite Park and Curry Company stock at $49.5 million plus compound interest when the company's current contract with the National Park Service expires in September of 1993.

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1. Above all other goals, protect park natural and historic resources,
2. Provide quality visitor services at reasonable cost,
3. Provide concessioners with a reasonable opportunity for profit,
4. Provide for a fair return of fees, investments, and services to the Government, and
5. Promote competition in concession contracting.

I am pleased to report that the agreement reached between MCA and the Foundation will assure us that these five principles will be accomplished.

This significant achievement could only have occurred with the full cooperation and good faith of MCA, the National Park Foundation, and the parties to this agreement.

Mr. Chairman, I am proud and pleased to have been given the opportunity to participate in this historic agreement. I can assure you, and all Americans, that all parties have negotiated hard, well, and in good faith to ensure successful future management and operations of one of this country's magnificent wonders, Yosemite National Park.

Now, Mr. Chairman, I would be pleased to respond to your questions.

Senator BUMPERS. Mr. Secretary, we will proceed to hear all three witnesses, then go to the questioning.

Mr. Hadl, you are next on my list.

## STATEMENT OF ROBERT D. HADL, VICE PRESIDENT AND GENERAL COUNSEL, MCA, INC., UNIVERSAL CITY, CA

Mr. HADL. Thank you, Mr. Chairman.

My name is Robert Hadl. I am vice president and general counsel of MCA. MCA has owned the Yosemite Park and Curry Company and Yosemite National Park since 1973.

At the end of last year, MCA was acquired by Matsushita Electric Industrial Co., Ltd. When the transaction was first publicly announced on November 26, 1990, MCA and Matsushita made clear that a critical aspect of the transaction was to sell the Curry Company to a qualified American buyer. Thereafter, the Board of Directors of MCA created a special committee to meet this objective. The members of the special committee are Mr. Len Wasserman, chairman and chief executive officer of MCA, and Mr. Sid Sheinberg, president and chief operating officer of MCA.

Subsequently, on January 8, 1991, MCA entered into an agreement in principle, to sell the Curry Company to the National Park Foundation, a nonprofit organization chartered by Congress. Throughout the process of negotiating the agreement, MCA worked in conjunction with the Secretary of the Interior and the Director of the National Park Service to bring about this sale which has been approved in concept by the Secretary.

The agreement which was reached ensures that the concession at Yosemite Park will continue to be run and managed by the Curry Company and allows an orderly transfer to an American concessioner.

We believe the agreement is fair, negotiated in good faith, and permits all parties to the agreement to achieve important objectives.

At the present time, the contractual language providing for the sale of the Curry Company is being finalized. And these efforts are proceeding in a normal fashion. As before, the Interior Department and the Park Service are involved in these deliberations. And a final agreement will be submitted to the Secretary for his review and approval.

Separate and apart from the agreement I have just outlined, MCA will donate $2 million per year for the next 3 years to the National Park Foundation for the benefit of Yosemite and other national parks.

As I indicated in my testimony before the House Interior Committee, this agreement meets the needs of all interested parties. To the more than 3 million people who visit Yosemite each year, this agreement means that the concession facilities at the Park will continue to be available for their enjoyment and benefit.

To the Department of the Interior it means the achievement of many concession policy goals. To the National Park Foundation, it means an enhanced role in serving our National Parks. To MCA it means that we have kept our word to keep this national treasure in American hands.

Thank you, Mr. Chairman.

Senator BUMPERS. Thank you.

Mr. Silverstein.

**STATEMENT OF LEONARD L. SILVERSTEIN, COUNSEL, NATIONAL PARK FOUNDATION**

Mr. SILVERSTEIN. Yes, thank you, Mr. Chairman and members of the committee.

My name is Leonard Silverstein. And I am here as counsel to the National Park Foundation, whose president, Alan Rubin, is also here in the committee chambers.

I want to say first, and to restate, that we, in turn, are pleased to report, as Secretary Lujan has stated, and Mr. Hadl, that we are now carrying out the transaction under the principles reported in the term sheet of January 8 of this year.

Indeed, at the present time, as was noted, we are in the midst of reviewing the detailed mechanics and the technical aspects of the proposed transaction.

As the committee is aware, the National Park Foundation has been designated as the acquiring entity for Yosemite Park and Curry Company. This acquiring entity may take the form of a newly formed separate, nonprofit foundation, which we will tentatively style the Yosemite-Curry Foundation. It will be the acquiring entity.

We also anticipate the National Park Service will have announced specification for bids for the future operation of the concession in Yosemite, and have selected—and will have selected a new concessioner well prior to the closing of the current contract on September 29, 1993.

As we understand that procedure, all interested parties—profit and nonprofit alike—on a level playing field, including the Yosemite-Curry Foundation will have an opportunity to submit bids for the concession. The successful bidder will be responsible, of course, for satisfaction of the liabilities to MCA which the NPF will acquire as part of its transaction.

Finally, we anticipate that all of the details, together with all of the necessary requests for clearances will be completed prior to April 2, 1991.

I will be delighted, of course, to respond to questions with the other witnesses. Thank you very much, Mr. Chairman, and committee members.

Senator BUMPERS. Thank you, Mr. Silverstein.

First of all, Mr. Hadl, I guess I should direct this question to you—and so that we are all on the same wavelength and we know what we are talking about so far as the term sheet and the terms of the promissory note are concerned, I understand that the note will run—the note is for a period from 1993 to 2008. Is that correct?

Mr. HADL. That's correct.

Senator BUMPERS. And that it will bear 8.5 percent interest?

Mr. HADL. That's correct.

Senator BUMPERS. Now, my first question is, is this a sort of a rear-end loaded note or it is amortized over a steady period of roughly—what shall I say—15 years?

Mr. HADL. It's—as it says in the term sheet, it is amortized gradably. That means the principal is paid in equal amounts each year, and that——

Senator BUMPERS. And the interest declines each year?

Mr. HADL. That is correct.

Senator BUMPERS. Now, as I understand it, then, this note is going to start bearing interest immediately so that the $49.5 million note, by the time the National Park Foundation assumes it in

1993, will have accrued enough interest to effectively make it a $62 million note?

Mr. HADL. I think that is approximately correct, $61 million to $62 million.

Senator BUMPERS. All right, and so they are going to be paying 8.5 percent interest beginning in the latter part of—September of 1993—they are going to begin paying 8.5 percent interest on $62 million. Is that correct?

Mr. HADL. Starting October 1, 1993, that is correct.

Senator BUMPERS. Now, if that is ratably reduced, according to my sort of crude calculations here, their first year's payment is going to be close to $10 million, maybe in excess of $10 million.

Mr. HADL. No, I believe it will be in excess of $9 million.

Senator BUMPERS. Between $9 million and $10 million?

Mr. HADL. That is correct.

Senator BUMPERS. Then my question is—and perhaps I should certainly ask this of you because you have had this contract these many years and you know whether it is profitable or not and how profitable—if they continue to operate this concession as MCA has, would you anticipate, number one, them being able to maintain the property and the equipment in its present state—with wear and tear excepted—and still make a $10 million payment a year?

Mr. SILVERSTEIN. Well, I would be happy to answer that. I think that in the conversations we had with the Secretary and the Director of the Park Service, they did some very careful projections about the note and the payments and how this would all work. And the answer to your question is yes. And I would suggest that they might like to answer that as well.

Senator BUMPERS. Mr. Silverstein, do you have any comments on that?

Mr. SILVERSTEIN. No, except to restate what Mr. Hadl has indicated. And Director Ridenour is here, and participated, of course, on the front line with the Secretary in making those calculations.

Mr. RIDENOUR. We built into the formula, as we were putting the numbers together, using their numbers from past history in terms of what it took to maintain the buildings and facilities and everything in good operating order. We built that into the formula when we figured out the final price.

Senator BUMPERS. Well, Mr. Ridenour, since you have answered that question, are there any provisions in this transaction that require MCA to maintain the buildings and equipment or possibly even add to the physical plant between now and 1993?

Mr. RIDENOUR. Certainly they have the responsibilities to maintain. I can't recall the name of the term, it is like a standstill provision—in other words, they have the responsibilities that we would normally expect of them during these next 3 years.

Senator BUMPERS. Well let me ask you this question, then. Under the current Yosemite agreement, MCA returns a flat amount of 0.75 percent of revenues—which last year, I understand, were $82 million. Is that not correct?

Secretary LUJAN. No, it is substantially more than that. It is in the $.5 million area.

Senator BUMPERS. No, I am saying MCA—MCA's revenues in Yosemite last year were $82 million, of which they paid 0.75 percent

to the Park Service. Now the way this concession policy works now, they are not only obligated to return 0.75 percent in cash, but they are also required to make certain improvements from time to time, to be agreed on between them and the Park Service.

Mr. RIDENOUR. Yes, that is correct.

Senator BUMPERS. All right, now since they are going to continue to operate this thing between now and 1993, under the terms of their existing contract, will they be required to make the same kinds of additions they have been making in the past?

Mr. RIDENOUR. Yes, sir, they will, under our agreement. Maybe Mr. Hadl can remember that term that is used. Is it a standstill agreement? Is that the right term?

Mr. SILVERSTEIN. I can read that if you would like. It just says "during the remaining"—this is under the term sheet, which you may have, "during the remaining term of the existing contract, the Curry Company shall be operated on substantially the same basis as it has been operated by MCA. And in our contract negotiations we have, of course, addressed this point. And MCA has been extremely cooperative in describing to us the ongoing expenses and the range of capital expenditures which they normally make. Much of this depends on events, such as pipes wearing out, et cetera, and new improvements which would normally be undertaken.

And I believe they are undertaking—this has yet to be finalized—is that they will continue that. If certain expenditures lap over the period of 1993, this would be a subject of discussion.

Senator BUMPERS. Well, Mr. Silverstein, do you have any idea approximately how much the Curry Company has been putting in in improvements over the past few years on an annual basis?

Mr. SILVERSTEIN. Yes, and Mr. Dan Jensen, who is a very key officer, has indicated the expenditures vary between $1.5 million and $4 million, annually, depending upon circumstances—if I have the number right—$2.5 million to $3.5 million, but in that range.

Senator BUMPERS. So the Park Foundation will be happy if they continue to operate it on substantially that basis. Does that mean to you, substantially, mean that they will put $2.5 million to $3.5 million in improvements a year into that park?

Mr. SILVERSTEIN. Well, the expectation would be that as circumstances demand improvements, MCA will step up in accordance with that range and take care of it. As I indicated, if a major improvement, not anticipated, is desired, and the costs of that and the useful life of that would extend beyond 1993, we are in discussions as to how to cope with that. But I think from the Foundation standpoint, and for the benefit of any other concessioner, the goal would be to continue the program so that if a desired capital improvement were necessary it would not be undertaken simply because of this 1993 cut-off date.

Senator BUMPERS. Do you have any problem with what he just said, Mr. Hadl?

Mr. HADL. No, I do not. I can also advise the committee that we have, in the budget for this year—we do the budgets on an annual basis—in excess of $3 million for capital improvements.

Senator BUMPERS. Very good.

Well, I have a few other questions. I will hold them in the interest of allowing other members of the committee to ask questions.

Senator Murkowski.

Senator MURKOWSKI. I have long been an advocate and supporter of foreign investment in the United States. I only hesitate is if there is a foreign government investment behind foreign private investment or foreign government subsidies on market interest rates that make it very difficult for U.S. companies to compete.

But I am concerned here, Mr. Chairman. We have a rather unique situation. I am not going to dwell on the specific issue here of this suddenly coming up and being prohibitive, because it is now Japanese ownership. That creates perhaps a little bit of a political problem for the Department of the Interior on perception.

But reality is that this country welcomes foreign investment. This policy of Secretary Lujan's is inconsistent with other policies. In Alaska, we have a place called Glacier Bay National Park, which is served by foreign ships. In fact, the U.S. does not have any passenger ships left, other than two that operate in Hawaii and with the exception of the Alaska ferry system which is the largest concentration of U.S. flag passenger vessels existing in the world.

Here we have the major cruise lines that go up to Alaska and cruise in Glacier Bay and operate under concession permits. There is legislation already in the House that prohibits foreign operations of Park concessions. These vessels are all foreign owned, every single one of them. They are all the major cruise vessels of the world—the Cunard Countess, the Cunard Adventure, all the Holland-American Line ships. They would be all exempted because of the precedent that is apparently being set here—or could be set—with this policy which simply says foreigners cannot own Park concessions.

I do not know where we got our background that said that this is as American as apple pie. But for heaven sakes, in Canada, at Banff, three hotels are operated by the Japanese, one by an American firm, two by European firms.

The sale of this is essentially accomplished, but I have several questions with regard to a firm that I gather is kind of a foundation of the Department of Interior, the Federal Government. I assume this is not a contingent liability to the Federal Government, because the assets of this corporation, which I assume is nonprofit, but during the operation they are operating a profit-making concession which makes things get a little fuzzy as to how they can justify being nonprofit. And then they are going to peddle it in a couple of years. It raises some real questions about the legitimacy of entering into a contractual sale agreement that involves some $60 million or $70 million, with the capitalization of a corporation that has little bit more than a promissory note.

And I assume that the reality of the sale from MCA to the National Park Foundation is such that you would retain, in effect, collateralization on all the assets. And I assume there would be assignment of funds. What happens if they cannot pay, if they do not generate enough revenue? Does it become an obligation of the Federal Government or do you foreclose? What happens?

Secretary LUJAN. Well, let me just kind of defend myself a little bit over here because of the tone of things that I hear bandied about about Japanese bashing and that sort of thing. Let me assure Senator Murkowski that long before, long before I knew that Mat-

sushita was going to acquire MCA, we had contacted MCA to donate those buildings to us as a gesture toward the Federal Government. It just happened that during the middle of this whole thing, Matsushita bought MCA. I cannot tell you that we would have had any success or not success of MCA donating those buildings, but we were talking about it.

So it just happened that during this period of time Matsushita came in. So that was not what was driving this whole contract. I felt, and our policies were—and I had discussed them with this committee before—that we needed to do away with the possessory interest, acquire the possessory interests, in all of our national parks. And this is the first one that came up and I felt that we were very successful in doing that, and bought it at what I felt and what MCA feels is a good deal for everybody.

So I just wanted to lay that on the record that it was long before this whole thing of Matsushita purchasing it that we had already approached MCA on donating those properties to us.

Senator MURKOWSKI. Well, if I may continue briefly. What is the Department of the Interior's intention regarding the example that I brought up about the prohibition on cruise ships and the concessions that are virtually the same as this?

Secretary LUJAN. Well, we have contracts with those companies. If the Congress passes a bill that says that there shall be no foreign ownership of contracts in our concession, then we will follow the law.

Senator MURKOWSKI. Well, is that a position that the Secretary of the Interior supports?

Secretary LUJAN. I do not have any intention of just canceling those cruise ship contracts or trying to in any way, nor to buy those ships either, I will tell you.

Senator MURKOWSKI. Well, I would agree with that. The idea of buying those ships—you are talking about something the size of the national debt.

But you have a parallel here, do you not?

Secretary LUJAN. Yes, there is no possessory interest. They are not buildings on Federal land. And there can be competition by anyone else that owns a ship somewhere else in the world.

Senator MURKOWSKI. No, you control the entries.

Secretary LUJAN. No, but there can be competition in bidding for that contract.

Senator MURKOWSKI. But there is no other competition but foreign ships.

Secretary LUJAN. Well, there may be somebody else in the world, somewhere else that owns a cruise ship.

Senator MURKOWSKI. They are foreign. There is no U.S. ship left. We do not have a U.S. passenger ship.

Secretary LUJAN. No, I am not saying that. I am saying that the prohibition to competition within a national park on land was that these concessioners own the possessory interest in the buildings. And if you want to compete with them, then you must buy them from the concessioners.

In the case of the cruise ships, that is a different sort of thing. Another cruise line, foreign owned or locally owned or whatever,

may come in and bid against them. And there can be competition in that instance. So it is a totally different thing.

Senator MURKOWSKI. My last question, because I want to give my colleagues a chance, is this an issue, as far as interpretation goes, of foreign ownership of park concession operations, that it is the position of the Department of the Interior that they should be prohibited?

Secretary LUJAN. There is no such position in the Department of the Interior. This transaction was primarily a case of—and that is Department policy—to acquire the possessory interest only. That is the only motivation.

Senator MURKOWSKI. Then there is no policy that is forming under your administration which would suggest that foreign ownership of park concession operations should be disallowed, not allowed in the future, and you would, therefore, be open to any foreign operation of park concessions. Is that right? This just happens to be a circumstance?

Secretary LUJAN. That is correct. There is no Department policy against foreign ownership, I will tell you this. Let me expand on it—that is a danger of the whole thing. My personal preference would be that a domestic company own it, and that is separate. But there is no Department policy which opposes foreign ownership of concession contracts.

Senator BUMPERS. We would not want the British operating Independence Hall, would we?

[Laughter.]

Secretary LUJAN. I think you make a good point, Senator.

Senator MURKOWSKI. That depends upon how much rent they paid.

[Laughter.]

Senator BUMPERS. Senator Johnston.

The CHAIRMAN. Thank you, Senator Bumpers.

Mr. Hadl, what do you think the fair market value of the possessory interest of MCA-Curry Company was before you entered this contract?

Mr. HADL. Senator, I wish I could give you a very specific answer to that. Under the contract it was required to be subjected to—if we could not agree on an amount with a successor, it would be subject to a kind of arbitration, appraisal, arbitration proceeding. And so I think I would be speculating right now if——

The CHAIRMAN. Well, would say it was more or less than the $49.5 million?

Mr. HADL. Well, I would say that—as of when?

The CHAIRMAN. As of the day before you signed the contract.

Mr. HADL. As of the end of the contract?

The CHAIRMAN. No, as of the day before you signed this contract. What do you think the fair market value of the possessory interest was?

Mr. HADL. Well, again, I think I would be speculating. I think we feel we reached a fair agreement with the Secretary on this. And I would rather not reopen the negotiation.

The CHAIRMAN. What do you think it was, Mr. Secretary?

Secretary LUJAN. I think we got a good deal.

The CHAIRMAN. Well, I had heard a figure of $100 million or something like that.

Secretary LUJAN. Probably, probably I would imagine that if we had had an appraisal we might have come up to that figure or more.

The CHAIRMAN. Would you disagree with the Secretary?

Mr. HADL. I would not want to disagree with the Secretary.

[Laughter.]

The CHAIRMAN. Now what did you make out of this per year?

Mr. HADL. Pardon me?

The CHAIRMAN. What was your net operating profit per year at Yosemite?

Mr. HADL. Well, again, that is hard. It depends on a given year. Last summer, for example, right in the middle of the height of the season, you may recall, we had a major fire in Yosemite and had to close the entire park during that period of time. I think it has varied. We have owned it since 1973, and I think it has varied over the years.

The CHAIRMAN. What do you think it would be on the average?

Secretary LUJAN. I cannot talk with you about that. I am under court order, Mr. Chairman. But we think there is enough there. We know there is enough there to make our payments.

The CHAIRMAN. Well——

Senator BUMPERS. I think that is the understatement of the year.

The CHAIRMAN. Nobody has any idea what this—I mean, do you have CPA's or anything working on this?

Mr. HADL. I think the Secretary correctly indicated there has been a proceeding, a court proceeding, going on about revealing this information. We, as a matter of course, regard the profits at the park as business proprietary information. And we have been reluctant to reveal them as well.

The CHAIRMAN. The court ordered you not to tell the United States Senate what they made out there on something you are selling and purchasing? Can that be?

Secretary LUJAN. I am under court order not to reveal the profits of the concessioners. Now, I do not know if that applies to the Senate or not.

Oh, I am told that the Department has provided that to the committee in confidence. They are whispering that into your ear right now.

The CHAIRMAN. Well, staff just tells me that the Inspector General made a report about some of this. And that the court order was directed toward the Inspector General's report, but not to you telling the United States Senate.

Secretary LUJAN. The Inspector General told me, personally, that I could not reveal those figures, that the court prohibited me from doing so. I will come up and whisper in your ear. But I cannot tell you publicly.

The CHAIRMAN. Does anybody in the press know what they made? I mean, I am serious. Here we are getting ready to sell the concession at Yosemite National Park, and nobody can tell us what they make per year?

Secretary LUJAN. Well, let me put it this year. Our payment is going to be $10 million. You know that. And we are going to be able to make that payment. So, obviously, that tells you——

The CHAIRMAN. I figured that because they are going to have a mortgage on the Ahwahnee, and other assets, you do not want to sell those. So you must think—do they make $200 million a year? Or do they make—I mean somebody ought to be able to——

Senator BUMPERS. They only take in $82 million.

The CHAIRMAN. All right, you take in $82 million?

Secretary LUJAN. Let me tell you this. I would be glad to talk to you about it. I guess I am just prohibited from saying so in public. I am trying to give you as big a clue as I can. But I will be glad to visit with you and tell you.

The CHAIRMAN. Well, we are doing the public's business here. It is not something that we are talking about, that we are going to sell our little rent house for. This is the public's business on a very important asset. Somebody ought to be able to tell me.

Secretary LUJAN. I cannot. I do not have any objections to somebody else telling you.

Mr. HADL. We will be glad to cooperate with the committee. That is why we were here, and to provide you with whatever information you need in the best way possible.

The CHAIRMAN. It is a very simple question. Somebody must know. I think I read it in the paper, how much it makes per year. And you can say, well, it depends upon gross profits or net profits or how much you put in the fund, or whatever.

Mr. HADL. Well, I think you necessarily are going to get into those kind of questions if you are talking about profits before taxes, how much tax is paid. And then you have the capital contribution. And then you have other things that we put back in. So I think we would be happy to assure you or assure the staff of whatever numbers you would like to see.

The CHAIRMAN. Well, I would just like—give me any numbers.

Secretary LUJAN. Mr. Chairman, I am told by the lawyers that if you ask me how much average profit there is there I can give you my interpretation of what it is.

The CHAIRMAN. Good, that is my question.

Secretary LUJAN. The lawyers tell me that. What do you want to know?

The CHAIRMAN. The average net profit, before taxes.

Secretary LUJAN. The figures that I saw in examining it would lead me to believe that there is going to be somewhere in the area of $12 million to $13 million.

The CHAIRMAN. $12 million to $13 million, okay?

Now, before this contract was signed, there was a preferential right of renewal?

Mr. HADL. That is correct.

The CHAIRMAN. And that would give you an automatic option to renew.

Mr. HADL. I do not know how automatic it would be, but there is a preferential right of renewal. Of course we are, under the term sheet, we are transferring the Curry Company to the National Park Foundation, 1 day before the end of the contract. And it is

the National Park Foundation which is going to be waiving that right on that last day.

The CHAIRMAN. But the Foundation said it will be waived. Under that preferential right of renewal, after this agreement, would Curry Company have been able to renew? And if so, for how long?

Secretary LUJAN. They would have the right—the preferential right to renewal has been interpreted in the past as the right to match any other bidder. And if they matched any other bidder, they can keep the contract.

The CHAIRMAN. And that is for how long?

Secretary LUJAN. Well, depending—the last contract was for 30 years. Our new policies are to keep it as short as possible, to allow a concessioner to be able to finance buildings or anything that they might want to build. But absent that, if there is no long-term investment, we would like to keep it to 5 years. And I would suspect that in Yosemite there would not be any additional buildings that would require a lot of money where possessory interest would be needed for a long period of time. So I would imagine that in that case it would have probably been 5 years.

Today, because of the $40 million that we will owe, it will probably be the 15-year amortization period.

The CHAIRMAN. Now, if you had an asset here that was worth $100 million, that made from $12 million to $13 million a year operating profit, that had a right to renew that under preferential terms, why did you consider this to be a good deal, Mr. Hadl?

Mr. HADL. Well, as I said, Senator, I think there are a variety of factors. We had a separate proposal which we had originally made, as you may recall, if you were reading the newspapers. That proposal was not accepted by the Department. And instead the Secretary urged us to consider a different proposal. And we met with his representatives and with representatives of the National Park Foundation. And we decided that the deal that was constructed here was a fair deal and one which we could agree to. And that is why we did it.

The CHAIRMAN. Well, I know you did it. But what I am asking, I guess, is if you did not consider it to be a fair deal would you say so?

Mr. HADL. Yes.

The CHAIRMAN. Why is that fair to sell a $100 million asset for $49 million? You are making good profits and you got a right to renew.

Secretary LUJAN. Mr. Chairman, the right—that preferential right, according to our new policies, would not be there anymore, whether they kept it or whether they did not. So there is a difference there.

The CHAIRMAN. They would not have had the right to renew?

Secretary LUJAN. Not in the same way. The preferential right is not being interpreted anymore—by law we must give them the preferential right. But the preferential right is not being interpreted now as if you match somebody else you can keep the contract. The preferential right will be much, much less attractive than that. I am thinking that perhaps you get a 5 percent preference or a small percentage preference, not that big, big preference that they have enjoyed in the past.

The CHAIRMAN. What I am getting at, it just looks to me like Secretary Lujan did a hell of a job of negotiating and got something for about 50 cents on the dollar. I mean, is that not right?

Secretary LUJAN. Well, it is pre-tax $12 million to $13 million. That makes a difference.

Senator BUMPERS. Oh, that is pre-tax?

Secretary LUJAN. Yes.

Senator BUMPERS. Senator Johnston, you have the floor. But I do not understand how the Foundation is going to amortize $10 million a year on a $12 million pre-tax profit—just assume all things are equal—and they are going to pay 36 percent tax on that.

Mr. HADL. We do not pay taxes.

Senator BUMPERS. That is right.

Mr. SILVERSTEIN. The National Park Foundation, through this new nonprofit entity, should not pay any tax.

The CHAIRMAN. Let me just——

Senator MURKOWSKI. Well, the Treasury loses that money, right?

Secretary LUJAN. But gains $12 million or $13 million on the other side.

Senator MURKOWSKI. It is supposed to go to the Treasury anyway, excuse me.

The CHAIRMAN. Let me just close with a question or two about Yosemite, in which I am very interested. I have spent a lot of time out there.

I think we are going to have, in the future, a basic philosophical conflict between those who want to go into Yosemite Valley, which I am not particularly interested in, and, go to Hamburger Heaven and all of those things, and those that want to go into the high country and hike and do those kind of things, which is what I like to do.

But when you are—on the new Park policy, there will be a huge conflict about restricting access to Yosemite, about people living outside and whether they live inside or that sort of thing.

What is your plan right now, Mr. Secretary, or Mr. Ridenour, or what are your thoughts, if you can tell us quickly, on the continuation of the same kind of use patterns that you have at Yosemite?

Mr. RIDENOUR. Senator, there was a 1980 General Management Plan that was made for the park. We have consistently said that we remain committed to the goals. I very carefully put that to the goals of the 1980 General Management Plan, which would call for some reduction of the footprint in the valley of both the commercial interest as well as the interest of the National Park Service in terms of housing and different things that take place in the valley now.

In our 1992 budget, which we will be discussing—which I just discussed this morning—one of the big items is $16.5 million to build a new maintenance warehouse facility outside the valley to service the park, which will allow us to take down a number of the buildings inside the valley, which will be a great step forward to the 1980 plan.

Plus, it will also require that fewer people have to drive to get to work—drive into the valley. So our plans generally are to reduce the footprint of both the commercial as well as our own people in the valley at Yosemite.

The CHAIRMAN. But to do that, largely, not through restricting access of the public, but eliminating your own footprint, your own internal footprint from your employees and your concessioners.

Mr. RIDENOUR. Yes, sir, and I would say that there may be a day—I hope it is not soon—but there may be a day when we would have to restrict access to the valley at some point. I guess we are thinking about that about a number of our parks, that that day might come.

The CHAIRMAN. You mean because of increasing pressure or because present pressure is too much?

Mr. RIDENOUR. Because of increasing pressure, more visitation. One of the things that we are looking very carefully at is how to restrict, in some way, the way people get to the valley, in terms of so much automobile use, for example.

If you have been to the valley recently—and I heard your comment how you like to go down to the back country. The last time I was in the valley, and my wife was with me, and we slept there—or tried to go to sleep—but I noticed that the noise was more than I am used to here in Washington, D.C. in terms of driving in and around while you were sleeping there in the lodge. So we have that same concern.

The CHAIRMAN. The last time I was there I was in the high country for 4 days and saw five people. It was a marvelous experience. And I do not know why, with all of that just up there accessible to everybody, why more people do not go back in there. Because that is the prettiest part of the valley.

One final question—it appeared to me when I was out there, to the unpracticed eye, that it was—it seemed to be fairly well run out there. What kind of job has Curry Company done?

Secretary LUJAN. Very good.

Mr. RIDENOUR. Nowhere have we ever criticized the operations of the Yosemite Park and Curry Company. They are an efficient operator. They have been a good operator. They have had an environmental ethic that they can point proudly to. I think by and large we have been pretty pleased with that.

The CHAIRMAN. Mr. Chairman, I really look forward to working with you as we redesign—if that is the word—a new concessioner policy. Because it is going to be very, very controversial to try to strike that balance to keep from ruining these great parks by overuse and yet, not overly restricting public access. Because, after all, these are public facilities.

Thank you, Mr. Chairman.

Senator BUMPERS. Thank you, Senator Johnston.

Senator Burns.

Senator BURNS. Thank you, Mr. Chairman.

I would—I guess I just have a couple of questions.

And Senator Johnston, had you run into seven people up there instead of five, you would have howled where are all these people coming from?

[Laughter.]

Senator BURNS. And then we start figuring the cost of maintenance of our public lands, just for that purpose. And you want to figure the Government's outlay of cost per hiker up there, it would

be astounding what we have to provide for those spiritual experiences. But we are not going to get into that today.

I was wondering, through this whole scenario of throwing some big numbers around here, Mr. Secretary, if it would not be possible to—it was purchased for $49 million, and then $12 million to $13 million profit there. I am wondering if when we start appropriating money for the operation of Yosemite National Park we may forego that next time? Is that any possibility of that happening?

Secretary LUJAN. I doubt it very much, Senator.

Senator BURNS. I just wondered. That is all the questions that I have. Thank you very much.

[Laughter.]

Senator BUMPERS. Mr. Secretary, I will close, and Senator Murkowski might have some additional questions. And incidentally, my question goes to the point that he was making earlier.

Let us assume that the National Park Foundation does default. Let us assume we have a big depression. Tourism drops. And they cannot amortize the $9 million payment a year. As I understand the agreement, MCA who is going to be the lienholder and holder of the promissory note, can select a successor to the Park Foundation or whoever the operator might be, subject to the approval of the National Park Service. Is that correct?

Secretary LUJAN. That is correct.

Mr. SILVERSTEIN. Which means that the Park Service would, effectively—MCA would technically hold—recover the properties, whatever is unamortized.

On the other hand, in order to dispose of those, the Park Service would have its own approval procedure so that it will not simply be in the hands of MCA to just dispose of at will.

Senator BUMPERS. Well, one of the things—and I just want to pursue that for a moment, and that is this. Let us assume that that $60 million debt has been reduced to $30 million when whoever the operator is defaults.

Now you are holding a lien on all of the property there, all of the possessory interest. And you are going to pick a successor. Now the successor under some conditions, for example, out in the real world you might foreclose on somebody's home and you wind up with a home and the note and then you find somebody else. And if you can get more than the balance of $30 million, you might resell it for $50 million. That cannot happen.

Mr. SILVERSTEIN. We are dealing with that very point in our negotiations. And let me assure you that there will be no secondary profit if there is a default. I think I can—and perhaps Mr. Hadl can speak on that.

Mr. HADL. What we are entitled to get at that point is the $30 million, in your example.

Senator BUMPERS. So you have no intention, whoever the operator is that defaults, of trying to jack the price back up simply because you have a new deal?

Mr. HADL. No, not at all.

Senator BUMPERS. Fine.

Senator Murkowski, did you have anything additional? We have a briefing at 3:00, one of those top-secret, sensitive briefings, that

we come back to our office and watch CNN to see what is really going on.

[Laughter.]

Senator BUMPERS. I would like to get over to that briefing. And with your indulgence, do you mind if I just leave this with you?

Senator MURKOWSKI. No, I will be along shortly.

Senator BUMPERS. Thank you, Mr. Secretary, thank you, Gentlemen.

Senator MURKOWSKI [presiding]. Let me ask the Secretary, and perhaps Mr. Silverstein, this question. When Congress established and chartered the Foundation in 1967, the statement of purpose provides for the Foundation to be established in order to encourage private gifts for the benefit of or in connection with the National Park Service activities, et cetera.

Now, as I understand this, the Secretary of the Interior and the Director of the National Park Service serve in an ex officio capacity on the Foundation's Board of Directors, as the chairman and secretary, respectively. Is that right?

Secretary LUJAN. Yes, sir.

Senator MURKOWSKI. Now, if the Foundation bids on the new contract in 1993, it would seem that this would be a conflict of interest. Can you give me any assurance of what the Foundation will seek at the end of 1993? In other words, have you made a decision to sell it?

Secretary LUJAN. No.

Senator MURKOWSKI. And if not, why not?

Secretary LUJAN. The answer to the question is we have not made a decision to sell it. I will have Mr. Silverstein answer what we are looking at because that is the essence of our discussions, or was the essence of our discussions, yesterday.

But I want to tell you that we are looking at those options because of that very question that you raised, that conflict of interest.

Senator MURKOWSKI. You feel you have a conflict of interest?

Secretary LUJAN. If the National Park Foundation operates it, there would at least be the appearance of a conflict of interest. There might not be any conflict of interest if I recuse myself. But then that does not work out too good. And so we are looking at ways to avoid that. And let me have Mr. Silverstein address that because it is a very——

Mr. SILVERSTEIN. Thank you, Mr. Secretary.

We have, of course, focused on that very question. And under the structure that we now propose, a separate, independent entity would be formed with its own board of directors. Its relation with the National Park Foundation would be after the needs of Yosemite are satisfied, if there are funds left over, some may go to Yosemite, some may go to the Park System—that is, through the National Park Foundation—or all three.

That will depend upon events and upon the articles which are now being organized. But the point is that the acquiring entity will have its own independent board. We hope that Director Ridenour, or his successor, could be one of the Board members if no conflict is determined.

But in any event, it will be an absolutely independent operation with an obligation, as any nonprofit, to distribute its funds for charitable purposes.

Senator MURKOWSKI. Why do you pursue this as an alternative as opposed to simply making a decision that you are going to come in and use the Foundation in an interim capacity and simply sell it? You know there is going to be a market. Then you have the uniformity of the concession process, as opposed to setting a brand new precedent and utilizing the Foundation for a purpose that it was not designed for, namely take over these, operate them on an interim basis and then move out to something that you create as a quasi-charitable. It seems that you are embarking on a path that is contrary to the intent of Congress in setting up the Foundation for which it was chartered in 1967.

Secretary LUJAN. No, we are not charting new ground. The Foundation went into the agreement just as an interim sort of thing. There is precedent now, one of our big concessioners is a nonprofit, Guest Services, GSI. They are a nonprofit organization. The advantage that we gain by putting together a nonprofit is that those profits come back to be reinvested back into the Park. That is the big advantage to it.

There is a nonprofit now that is one of our big, big concessioners.

Mr. SILVERSTEIN. I might add, Senator, that I made an assumption when stating what would occur with so-called profits after the needs of Yosemite were fulfilled. It may well be that the new acquiring entity will simply be—well it is, in accordance with the statement—simply one of the bidders for the new concession. It may simply be a facilitating entity. And it may be a third-party profit, or nonprofit will be the ultimate concessioner. That depends upon events which will take place, I think, approximately a year from now. As indicated, there will be a specification for bids.

And so whether the new entity or another concessioner will ultimately obtain the concession depends upon events.

Senator MURKOWSKI. Well, in these non-profits, the Park Service is not on the Board. So there is more of an arms-length departure than what is suggested here. And clearly the current owners were not inclined to donate it. Is that correct?

Mr. HADL. That is correct.

Senator MURKOWSKI. I assume, for the very real reason that you had a responsibility to your shareholders?

Mr. HADL. That is correct.

Senator MURKOWSKI. And your alternative was what, to deduct the contribution from your taxes as a charitable donation, and that did not seem to be adequate, good business, for you. Why did you not just go ahead and sell it to somebody else for whatever the market would take? I am sure there would be a number of people out there who would like to buy it.

Mr. HADL. No, I think as I indicated in answer to Senator Johnston's question, we originally made a proposal at the end of December to the Secretary in which we would have placed the Curry Company in escrow for the purposes of finding an American buyer within a 12-month period, including donating the profits to the Foundation during that 12-month period. That was an official proposal, transmitted to the Department. It was not accepted.

And instead, in a period of several weeks there, the Secretary came back and urged us to alternatively go forward with the proposal which was ultimately consummated. And that is what happened.

Senator MURKOWSKI. And the reason again, I gather, is the preferential rights?

Secretary LUJAN. We wanted to acquire the possessory interest.

Senator MURKOWSKI. And this is just an arbitrary decision of the Department of the Interior, as far as making a determination that this would be, perhaps, of better interest to the Park Service, the Department of Interior, the taxpayer, the Treasury or whom. Who is the major beneficiary?

Secretary LUJAN. That is not an arbitrary decision. I mean, that sounds like we pulled it out of the air.

Senator MURKOWSKI. Well, it is innovative. Let us put it that way.

Secretary LUJAN. I like that word much better, Senator. Because in order to have competition in the bidding for these concession contracts, I felt that it was necessary, and the Director of the Park Service felt that it was necessary, that the possessory interest be extinguished. And we were working towards that. That was our primary motivation in all of this.

Senator MURKOWSKI. Well, I am not sure that I feel totally comfortable with the departure, and ultimately, the beneficiaries from the standpoint of what this may mean as far as setting future direction for the Park Service in the process of dealing with other concessioners. You clearly have the other alternative of just continuing on with the policy and simply selling to the highest responsible bidder, which has been the procedure previously.

Secretary LUJAN. Then we are where we did not want to be, that the concessioner owned the possessory interest, and that policy of the Department now is to acquire the possessory interest. We would like it donated by all of our concessioners. But I do not think that is going to be possible.

Senator MURKOWSKI. I think it would be interesting, Mr. Secretary, if we had at this hearing—and unfortunately we do not—concessioners who may have an opinion.

Secretary LUJAN. They do.

Senator MURKOWSKI. And we are not hearing from them. And I think that is unfortunate.

Secretary LUJAN. I have heard from them.

Senator MURKOWSKI. I would welcome, since I have the privilege of keeping the record open for 2 weeks, to encourage input from concessioners as to what their attitude is towards this, as I said, innovative approach, which is clearly not what the Foundation was chartered to do in the sense of the general congressional understanding.

Mr. SILVERSTEIN. If I may just note, Senator—the articles of incorporation in 1967 of the Foundation, contemplate, I believe, a facilitative act of this nature. I can just put them in the record, if you would like: to encourage private gifts of real and personal property, or any income therefrom, or other interest therein, for the benefit of, or in connection with the National Park Service, its activities or its services, and thereby defer to the conservation and

national scenic, historic, and scientific resources for future generations.

I believe that that really does contemplate a facilitative act of this nature.

Senator MURKOWSKI. Well, I quess I would not differ, I guess. We can all interpret. But I would certainly interpret the intention to be a solicitation of gifts as the real meaning of the Foundation's charter. And we have talked about gifts. Unfortunately, in this case, the Secretary tried, and the gift was not forthcoming.

Mr. SILVERSTEIN. Of course, the $6 million is not unincidental to this. And we are very pleased to receive that.

Senator MURKOWSKI. That is true. I guess there is no point in proceeding at great length with anything but a wind- up.

I am not sure what the position of the committee is with regard to disposition of this. I know that there are several members that are very concerned about it.

I think there may be legislation that will be offered by members of the committee relative to the issue of renewal of provisions of the contract. And, of course, the preferential right of renewal is a key to that. I think that is the only alternative the committee would have to move this thing off of the fast track that it is on.

And I think that the committee has an obligation to respond—and of course, any member of Congress can do that. But clearly, if it is going to be done, it should be done in an expeditious manner.

And I just sense a little bit of unrest, Mr. Secretary, because we are not just sure that this is not charting some rather interesting waters that might contain some alligators that might come back to haunt us.

I was pleased to have your statement of clarification with regard to foreign operators. It is not your intent to prohibit, under any circumstances, either foreign operators of cruise ships in Glacier Bay, or foreign operators that may acquire preferential rights or concessioner rights or concessions in parks. Is that correct?

Secretary LUJAN. I said we have no Department policy. That is correct. I also said that I would have a personal preference for domestic.

Senator MURKOWSKI. Well, sure, charity begins at home. But unfortunately it does not always work that way.

I guess the only other comment that I have, and I am sorry that Senator Johnston is not here, but one of the concerns we occasionally have in Alaska, as I have expressed from time to time to the National Park Service, is that sometimes a few Alaskans go in for a wilderness adventure. And the Park Service ranger is so lonely, that they come over to visit them and will not leave. So sometimes Alaskans experience just the opposite, where they feel that they are obliged to keep the poor Park Service ranger company.

Clearly, one questions the intensity of the management of some of those areas. And this actually occurred at Walker Lake, Mr. Director, as you know.

Are there any other things you want to bring up at this time? Well, thank you, gentlemen. I think you have left us with many more questions than we had when we started. I do not know if that is a good sign or not.

[Whereupon at 3:10 p.m., the hearing adjourned.]

# APPENDIXES

## APPENDIX I

## Responses to Additional Questions

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS,
*Washington, DC, March 4, 1991.*

Hon. MANUEL LUJAN, JR.,
*Secretary, Department of the Interior, Washington, DC.*

DEAR MR. SECRETARY: Thank you for your testimony at the February 21, 1991 Subcommittee oversight hearing on the proposed sale of the Yosemite Park and Curry Co. from MCA, Inc. to the National Park Foundation. I have submitted the enclosed questions to be answered in writing for inclusion in the hearing record. I would appreciate receiving your answers to these questions by Monday, March 18, 1991.

Thank your for your assistance.

Sincerely,

DALE BUMPERS, *Chairman.*

[Enclosure.]

[Committee Note.—Answers to the following questions were not received at the time the hearing went to press.]

QUESTIONS FOR SECRETARY MANUEL LUJAN FROM SENATOR DALE BUMPERS ON THE PROPOSED SALE OF THE YOSEMITE PARK AND CURRY CO.

1. During the hearing you testified that the preferential right of renewal is no longer being interpreted as providing an incumbent concessioner with the right to keep the concessions contract by matching the highest competing bid (see attached transcript). However, the "Concession Contracts and Permits" regulations provide that ". . . the existing concessioner shall be given an opportunity to meet the terms and conditions of the best proposal." (36 C.F.R. § 51.5(b)).

What is the Department's current policy on preferential right of renewal?

Has this new policy been articulated in a regulation, memorandum, Solicitor's opinion, etc., and under what authority was it developed?

Was any opportunity provided for public input prior to developing this new policy?

If the current definition of preferential right of renewal is no longer consistent with the provisions of section 51.5(b), has this regulation been repealed?

2. The term agreement signed by the Department of the Interior, the National Park Foundation and MCA Inc. provides that during the remaining term of the existing contract, the Yosemite Park and Curry Co. shall be operated on substantially the same basis as it has been operated by MCA. What incentive does MCA have to make major repairs or capital improvements during the remainder of the contract?

3. The term sheet states that the National Park Service will agree to provide a successor concessioner a reasonable opportunity for profit, including amortization of the note.

What will be the amount of the annual note payments?

Will the need to allow a concessioner the opportunity for a reasonable profit including amortization of the note restrict your ability to reform the terms and conditions of the Yosemite contract when the new contract is awarded in 1993?

4. The term sheet provides that the Park Service shall agree that there shall be no material change in the terms of the existing contract, including the scope of services or level of operation. Does this provision prevent the Park Service from aggressively pursuing the implementation of the 1980 Yosemite General Management Plan between now and 1993?

5. The agreement states that until the note is repaid, MCA shall have a first priority lien on, among other items, all equipment, fixtures, or other assets owned or utilized by the Yosemite Park and Curry Co. Does this provision give MCA a lien on assets owned by the Federal government that the Curry Co. happens to be utilizing?

6. The term sheet provides that the successor concessioner will "assume" the possessory interest currently owned by Curry Co. Does the term "assume" mean "own" or "have the use of?"

7. As the Chairman of the National Park Foundation's Board of Directors, do you believe that the Foundation should seek to bid on the new Yosemite concessions contract in 1993?

[Attachment.]

Secretary LUJAN. Mr. Chairman, the right—that preferential right, according to our new policies, would not be there anymore, whether they kept it or whether they did not. So there is a difference there.

The CHAIRMAN. They would not have had the right to renew?

Secretary LUJAN. Not in the same way. The preferential right is not being interpreted anymore—by law we must give them the preferential right. But the preferential right is not being interpreted now as if you match somebody else you can keep the contract. The preferential right will be much, much less attractive than that. I am thinking that perhaps you get a 5 percent preference or a small percentage preference, not that big, big preference that they have enjoyed in the past.

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QUESTIONS FROM SENATORS WALLOP AND MURKOWSKI FOR SECRETARY LUJAN ON YOSEMITE CONCESSIONS

1. When the purchase of MCA by a Japanese firm first came to your attention, in a conversation with Mr. Baker, Mr. Strauss and/or the attorneys for MCA, did you at that time indicate that you did not have a problem with a Japanese firm owning the Yosemite Park and Curry Company (YPC)? If so, what set of circumstances changed your mind?

2. Among the proposals, Matsushita announced it would seek to sell Yosemite Park and Curry Co. to a qualified American buyer. Furthermore, YPC would be held in escrow during the remainder of the contract (three years) with all net income donated to the National Park Foundation.

Approximately how much money would the Foundation have accrued during this time period?

Specifically, why did you reject this offer?

During the remaining three years, who will now receive the net income?

3. Under the terms of the agreement and at the conclusion of the contract, either the Park Foundation or a new entity will be required to assume the $62 million price tag ($49.5 + interest) to be paid over the next fifteen years. Initially, the new concessioner will incur monthly payments of approximately $800,000.

What do you plan to request as a reasonable franchise fee under the new contract?

4. One of your goals is to provide concessionaires with a reasonable opportunity for profit—specifically, what do you consider a reasonable profit at Yosemite?

5. You mentioned, ". . . Revenues generated by these operations will be of such magnitude as to assure that implementation of the goals of the Yosemite General Management Plan (GMP) will be significantly enhanced."

(a) Are the revenues you refer to the franchise fees?

If not, what are the revenues and how do you plan to capture such revenues?

(b) Specifically, what portions of the GMP do you expect to accomplish with these revenues?

(c) My understanding is that franchise fees are deposited in the Treasury and that park management is accomplished through the annual appropriations process. How do you intend to reserve monies to carry out GMP programs without subverting the appropriations process?

6. Should all foreign ownership of park concession operations be prohibited?

7. What about the cruise ships at Glacier Bay National Park and Preserve?

8. Why are buses which tour through the Golden Triangle of the Grand Canyon, Bryce and Zion National Parks not under a concession contract? Why are the cruise ships at Glacier Bay under a concession contract?

9. Is foreign ownership the real issue or was it simply used in this case to gain leverage in order to change the contract conditions?

10. Under the non-profit status of the Park Foundation, what, if any, will be the average loss of taxes (based on 1990 receipts) to Mariposa County, the State of California and the Federal government?

11. Under NPS criteria for selecting concessionaires, would the Foundation be qualified to operate the concession if the Curry Company organization was not in place?

12. Do you intend to direct the Foundation to operate any other concession operations?

13. Is it your purpose to have the Foundation serve as an interim holding company or do you expect the Foundation to seek the opportunity to bid on the new contract?

14. Under the agreement, you can appoint two members to the Board of Directors of MCA. In addition, you have stated that you and the Director will take active measures to avoid even the appearance of conflict of interest on this issue as it pertains to your statutory duties as officers of the Park Foundation and in you capacity as officials of the Department.

They key and most important phrase is "even the appearance"; specifically, how do you propose to accomplish avoiding "even the appearance" of conflict of interest?

15. Who is on the current Board of Directors of the National Park Foundation? Please describe the expertise of each individual member of the Board which would contribute to the Foundation's ability to operate Yosemite Park and Curry Company.

16. Do you believe Congress intended the Foundation to purchase and/or operate a park facility when it was chartered in 1967? Please explain your rationale in detail.

17. Do you believe all Yosemite National Park concession facilities should be property of the Federal government? If so, why is the public better served than if the facilities remained in the private sector?

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U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS,
*Washington, DC, March 1, 1991.*

Mr. LEONARD L. SILVERSTEIN,
*Counsel, National Park Foundation, Washington, DC.*

DEAR MR. SILVERSTEIN: Thank you for your testimony at the February 21, 1991 Subcommittee oversight hearing on the recent agreement to transfer control of the Yosemite Park and Curry Co. from MCA, Inc. to the National Park Foundation. I have submitted the enclosed questions from Senators Wallop and Murkowski to be answered in writing for inclusion in the Hearing Record. Please submit your answers by March 18, 1991. If you have any questions, please contract David Brooks of the Subcommittee staff at (202) 224-9863.

Thank you for your assistance.

Sincerely

DALE BUMPERS, *Chairman.*

RESPONSES TO QUESTIONS SUBMITTED BY SENATORS WALLOP AND MURKOWSKI ON YOSEMITE CONCESSIONS

[Note: Because discussion as to mechanical and other transactional details are currently underway between the parties, all responses respecting structure of the sale are tentative.]

*Question 1.* In your statement, you mention the sale provides a long-term solution for safeguarding Yosemite's precious natural resources. Specifically, what is now not safeguarded and how is your ownership of the Curry Company going to improve the situation?

Answer. It is currently contemplated that a newly created public nonprofit organization will acquire the assets of Yosemite Park and Curry Company. The new organization will be operated solely in the public interest without profit motive for the benefit of Yosemite and the National Park system. Thus, as contemplated, "profits"

which could otherwise be distributed to private shareholders, will be made available to preserve and improve Yosemite's natural resources and to implement the General Management Plan (GMP) of the National Park Service (NPS).

*Question 2.* Who is on the Board of Directors of the National Park Foundation? Please describe the expertise of each individual member of the Board which would contribute to the Foundation's ability to operate Yosemite Park and Curry Company.

Answer. The membership of the Board of Directors of the National Park Foundation (NPF) is indicated in Attachment A. Although we believe their personal identity is plainly sufficient to establish their individual capabilities to be fully responsible for the governance of Yosemite as noted in the response to question 1, direct ownership of the assets of Yosemite by NPF is not contemplated. In lieu thereof, it is anticipated that NPF will appoint Board members for the new organization from a universe of public-spirited, qualified individuals (which may include Board members of NPF and other persons with relevant specialized backgrounds). It may further be anticipated that direct operations of Yosemite will be carried on with experienced qualified personnel.

*Question 3.* You stated the Foundation is uniquely suited to assume ownership of the Curry Co. Based on your experience, why are you more suited to own the Curry Co. than TW Services, which operates the facilities at Yellowstone National Park?

Answer. As noted in the response to Question 2, (assuming (see our response to Question 4) that the new organization submits a bid for Yosemite) the operation of Yosemite would be carried on by personnel specifically chosen by reference to experience and expertise, such as, although in no respect limited to, existing Curry Company officers and employees. Assuming, as is intended, that the new organization (if it bids and bids successfully) will have as its objective, operation of Yosemite with distribution to Yosemite and/or NPF of any additional "earnings", the total arrangement is focused entirely on operation and improvement of Yosemite for the benefit of the National Park system and the people of America. It is again to be noted that, at the present time, no decision has been made by NPF respecting its intention to cause the new organization to participate as a "bidder" for operation of Yosemite.

*Question 4.* Is the Foundation contemplating bidding for the Yosemite contract in 1993?

Answer. No decision has been made affecting the submission of a bid for the Yosemite contract in 1993. It is contemplated that this decision will be made no sooner than the time when the new organization has been organized, the contract with MCA has been fully executed and the terms of the Concession contract are reviewed.

*Question 5.* I have a copy of an article from the February 20, 1991 *Fresno Bee*, which states the Yosemite Restoration Trust has called for major revisions to the pending $49.5 million sale of the Curry Company.

a. What is the Yosemite Restoration Trust?

b. Is there any connection or relationship between the National Park Foundation and the Yosemite Restoration Trust?

c. Does the Trust have any input or standing in your negotiations with MCA?

Answer 5.a. NPF has no official information respecting Yosemite Restoration Trust.

Answer b. There is no connection or relationship between NPF and Yosemite Restoration Trust.

Answer c. NPF has no information respecting the relationship between Yosemite Restoration Trust and MCA.

*Question 6.* Is the Foundation contemplating establishing a second nonprofit organization to receive and/or distribute funds from Curry Company profits? If so, please explain in detail the advantages to your organization.

Answer. The Foundation contemplates the establishment of a second nonprofit organization as noted in the responses to questions 1-4. This organization may or may not issue shares. If such shares are issued, all of such shares would be owned by National Park Foundation.

The grounds for establishment of a second nonprofit organization include the following:

a. Utilization of a nonprofit organization assures that the goals of operation would be improvement of Yosemite, appropriate public access to it, and preservation of a key natural resource and/or other resources of the National Park system without diversion of any energies or assets for other than public purposes.

b. Because the Board of Directors of NPF includes the Secretary of Interior and the Director of the National Park Service (who in turn will be publishing specifications to the public for operation of Yosemite in the post-September 29, 1993 period), the new organization (whose membership will not include either the Secretary or the Director) can determine (as noted under Question 3) either to withhold or submit a bid for operation of the concession without involvement of the Interior Department.

c. Operation of Yosemite by a nonprofit organization (in a manner which is consistent with other nonprofit concessions) can produce federal and possibly state tax savings which will add to the resources available for operation and improvement of Yosemite and the National Park System, all in the public interest.

[Attachment.]

Attachment A

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## APPENDIX II

## Additional Statements Submitted for the Record

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### PREPARED STATEMENT OF ALLAN T. HOWE, WASHINGTON REPRESENTATIVE, CONFERENCE OF NATIONAL PARK CONCESSIONERS

Mr. Chairman and Members of the Subcommittee. Thank you for this opportunity to submit a statement for the record of the hearing held on February 21, 1991 by your subcommittee on the proposed sale of the Yosemite Park and Curry Co. to The National Park Foundation.

Our organization, The Conference of National Park Concessioners, is comprised of those men and women and their companies who serve the visiting public in the units of the National Park System across our country.

Our organization has listened carefully to the explanation of the witnesses before the subcommittee addressing the agreement made between MCA and The National Park Foundation for the sale of Yosemite Park and Curry Co., effective at the end of the current YPC Co. concession contract. This is a private sale negotiated between these parties and we raise no questions about the terms of the agreement. However, we are concerned that the transaction could set precedent for future concessions transfers and feel that the policy ramifications should be very carefully examined by the subcommittee.

First, we believe that in the operation of the free economy system in which business organizations in our country operate, they should be free to negotiate sales of their assets with whomever they choose. To place limits on this business freedom would be a serious impairment of one's property rights. There are none under the law at this time.

In the situation between MCA and The National Park Foundation, while the parties seem to accept that it is a satisfactory transaction, it is our understanding that it was only brought about after substantial pressure by the Secretary of Interior and the National Park Service. The reasons for the pressure became quite clear in the testimony of the witnesses, namely, (1) It provided a method by which the Secretary of Interior and the National Park Service could control the price paid MCA for the value of its possessory interest, substantially lower than previous estimates; and (2) It provided a method by which The National Park Foundation could become the interim concessioner, thus giving an opportunity for The National Park Foundation, which is controlled by the Secretary, to waive one of the most valued rights under the contract and one mandated in all contracts by law, the preferential right of contract renewal.

As you know, the Congress wisely enacted in the National Parks Concessions Policy Act (P.L. 89-249), a provision that the possessory interest (the security interest which the concessioner receives under the law for its investment in facilities used for visitor services in the National Parks) would be valued at replacement cost, less depreciation, but not to exceed fair market value.

We seriously doubt that the valuation placed on the possessory interest of YPC Co. would pass that test. All estimates as to its value a short time before indicated a much higher price. The pressure for a sale to The National Park Foundation at a much lower price was brought about, not through the usual and ordinary methods of contract negotiations but through unfair tactics such as the frequent outbursts by Secretary Lujan against foreign ownership of concessions. The agreement clearly stated that YPC Co. would be sold to an American buyer at the earliest opportunity. The Secretary and the National Park Service did not allow the usual and necessary running of time for a willing seller and a willing buyer, of American origin, to negotiate a sale. Instead they continually pressured for a gift or a reduced sale price to the National Park Foundation, which they ultimately brought about.

All of this undue pressure and unfair negotiating tactics might be understandable if the concessioner was failing to meets its obligations to serve the public under its

contract. But Secretary Lujan clearly indicated that is not the case at Yosemite when he openly praised the concessioner as one of the very best in the whole system.

Why then was the Secretary of Interior and the Director of the National Park Service so intent on bringing about the sale to the National Park Foundation and what precedent does it set for future concessions transfers and for new contracts?

We noted that Secretary Lujan and Mr. Silverstein of the National Park Foundation both indicated that the National Park Foundation may well be a contender for the new concession contract at Yosemite in 1993. This appears to be a much expanded role for the Foundation from what had been originally portrayed as an interim role between concessioners. While we have been supporters of the National Park Foundation and contributors to its role as an organization to receive funds to assist the National Park Service, we seriously question the legal role of its use as a National Park concessioner. Beyond the obvious questions about its inadequacy to manage and operate a concession when organized as a Foundation for far different purposes, we believe the fact that the Secretary of Interior and the Director of the National Park Service serve on its Board clearly constitutes a conflict of interest raising both legal and ethical questions of a most serious nature.

The Secretary of Interior gave another reason for supporting the role of the National Park Foundation as a concessioner when he cited its structure as a non-profit organization. He even went on to point out that there are a few companies now operating concessions which are organized as non-profits. He seemed to imply that such an organizational structure would assure the deposit of all revenues, ordinarily identified as profits, with the National Park Service. The non-profit concessions organizations do not presently operate in such a manner and there is no reason to believe that any other non-profit organization, including the National Park Foundation, would do so. Simply put, no matter what the organizational structure of the concession operation, there are only a limited number of dollars to pay expenses of operations, a franchise fee, building use fees, and invest dollars for repairs, maintenance and rehabilitation in the facilities. The suggestion that much more could be gained by contracting with non-profit organizations does not square with the history of concessions, nor the statutory requirements of the law for concession operators to have a reasonable opportunity for profit." We believe this policy would set a dangerous and very unwise precedent in National Park concessions.

Another troubling part of the Secretary's testimony was his feeling that the Yosemite agreement will assure fulfillment of the five principles he espouses for his new policy. These are:

1. Above all other goals, protect park natural and historic resources.
2. Provide quality visitor services at reasonable cost.
3. Provide concessioners with a reasonable opportunity for profit.
4. Provide for a fair return of fees, investments, and services to the government.
5. Promote competition in concession contracting.

The Secretary mistakenly believes that the Yosemite contract fulfills his five-point policy. We respectfully disagree.

The basic premise of the present successful system has been the utilization of private capital in partnership with the government. If the new Yosemite contract is the standard by which others are to be measured, the incentives for private capital in the parks will be eliminated.

By establishing a system which gives preference to non-profit groups, qualified for-profit companies with expertise in the field of visitor services will effectively be shut out of any bid because they would literally have to be 50% better managers in order to compete with a non-profit company. Additionally, in this case, as an adjunct to the Secretary of Interior, the National Park Foundation cannot truly be viewed as an independent entity eligible to compete on a "level playing field" with other companies which may desire to compete for the Yosemite contract. How will this increase competition or improve the quality of visitor services?

A greater return to the taxpayers will not result since a tax exempt entity will not pay any state or federal income taxes. This means taxpayers will be subsidizing concessions operations, decreasing the return to the government. If private concessioners make park facilities available to the public at no cost to the government, why would the government spend its money to make these same facilities no more available and incur the additional liability, cost and responsibility of ownership? Legislation already exists which provides that the Secretary shall determine the amount of fees to be paid for concessions operations in National Parks. What greater leverage could the Secretary possibly seek?

It was indicated that the new Statement of Requirements for Yosemite will require that the concessioner reinvest all of its profits into the Park. If this is true, how is this consistent with the Secretary's goal to "provide concessioners with a reasonable opportunity for profit"? Further, by taking away rights or private property ownership, a concessioner's opportunity to run a successful business and develop an appreciating asset basis is destroyed. This effectively reduces competition for concession contracts by eliminating incentives to invest as well as resulting in the need for a higher return from the concession operations to compensate for the lack of potential long-term gains.

Requiring a higher operating return can be contrary to the Secretary's goal of providing quality visitor services at reasonable cost. The existing system, with strong regulation of services and prices by the National Park Service, has resulted in a very fair arrangement for users of Park facilities. If a concessioner's profits are being reinvested in the Park, isn't the concessioner entitled to expect that it will have a greater say in what the money is being spent on? Won't the National Park Service be inclined to desire increased profits (thereby increased funding) with the result that the regulatory role is compromised? How will this impact park facilities and operations?

We agree that the protection of the Park natural and historic resources should be above all other goals. The existing concession policies give that strong support in the Act and we believe that the existing system works to further that goal. Providing for a system that puts the amount of fees, the relinquishment of possessory interest and the lack of preferential right to renew ahead of protection of the Park's natural and historic resources is not in the best interest of the American people.

In his discussions of the franchise fee, the Secretary has consistently referred to a 22% "franchise fee" as an appropriate payment. This 22% "fee" is ostensibly paid under the Yellowstone contract. Using Yellowstone as an example of the returns which should be paid to the government for concessions operations is blatantly unfair and provides an inappropriate frame of reference for other concession operations.

The Yellowstone concession was purchased by the government in 1979 at a cost of $20 million. To date, there has been no income to the United States government from the purchase of this concession asset. Additionally, the government has been required to make investments in concession assets, such as the roof on the Lake Hotel, using additional taxpayer monies. Assuming even a modest 8% return, the accumulated interest on the Yellowstone debt is more than $30 million which is directly subsidized by the taxpayers, in addition to the initial $20 million purchase price.

The 22% "fee" is actually a reinvestment requirement for concessioner revenues. All of the 22% goes back into concession facilities. None goes to general park maintenance or structures, or to federal treasury. Other concessioners, including the Yosemite Park and Curry Co., provide all of the reinvestment included in the 22% Yellowstone "fee" out of their own pocket. In addition, concessioners pay franchise fees, property taxes, and federal and state income taxes. In Yellowstone there is no concession fee paid to the United States Treasury, there are no property taxes paid since the assets are owned by the federal government, and not one cent of the 22% "franchise fee" is invested in anything besides revenue producing assets of the concessioner.

When the Yellowstone assets were purchased by the government, a short-term operating contract was entered into with a subsequent ten-year agreement. Both of these contracts were open to bid. There was only one bidder for the initial term and for the follow-up contract. In 1991 the Yellowstone contract is again up for bid and it will be interesting to determine the level of interest.

Actually, the nature of the contact prohibits competition. The Yellowstone contract has a profit maximum which, to our understanding, has never been achieved by the concessioner.

In conclusion, The Conference of National Park Concessioners believes that America's National Parks are the envy of all the world. We have the finest system and visitor services in all the world. Those examining the system, including the Secretary of Interior, the Director of the National Park Service, the Congress, and all others, ought to reflect upon the reasons for our success.

We firmly believe that the founders of the National Park Service knew what they were doing when they engaged the private sector concessioners to serve the public, under clear and careful regulation of the National Park Service. The codification of those practices which had been tried and proved, in the National Parks Concessions Policy Act of 1965 (P.L. 89-249) was sound policy and still is.

While there may be need from time to time to review the National Park concessions system, there is no need to scrap a system which has produced such favorable results for all parties. The present law provides methods for adjustments without destroying the framework of a valid system. If all the incentives and security features of the law are removed and if the precedent of the Yosemite contract is repeated, the result will be the undermining of a system that has worked well and produced great benefits for all—the National Parks, the visiting public, and the government, and which has made possible one of the most successful partnerships between the government and the private sector which functions well today as the National Park Service celebrates the 75th anniversary of its founding.

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PREPARED STATEMENT OF THE NATIONAL PARK FOUNDATION

The National Park Foundation welcomed the January sale of MCA Inc.'s Yosemite Park and Curry (YPC) Company to the National Park Foundation (NPF). The placing of Yosemite operations in the hands of a U.S. nonprofit organization whose sole mission is to support the national parks is a good deal for Yosemite, a good deal for the parks, and a good deal for the American people.

The sale provides a long-term solution for safeguarding Yosemite's precious natural resources. Thanks to the generosity of MCA, it also contributes much needed funds to further the Foundation's important public outreach, education, interpretation and preservation programs. The agreement also ensures that the high-quality service provided by the Curry Co. to Yosemite visitors will continue.

The Foundation is uniquely suited to assume ownership of the Curry Co. Over the past year it has developed a clearly focused mission—to support the overall enhancement of the national park system and to foster public awareness, appreciation, understanding of and involvement in the system. To carry out this mission the Foundation focuses its efforts on supporting outreach and education programs, interpretation programs, volunteers in the national parks and career development for National Park Service employees. Ownership of the Curry Co., combined with MCA's generous gift, enhances the Foundation's ability to pursue and accomplish its stated mission.

Under terms of the agreement, MCA will sell 100% of its YPC stock at $49.5 million to the Foundation. The transfer of ownership of the park system's largest concessioner will be effective in September 1993, when the Curry Co. contract expires. At that time the Foundation will turn over the buildings, structures and all possessory interest in the park to the National Park Service.

Any contract the NPS may have in place at the first of October 1993 will be based on competitive bidding.

Curry Co. will operate and manage the Yosemite concession until then, with representatives of NPF serving on Curry's board of directors. The deal also includes a $6 million donation from MCA to NPF over the next 2½ years.

The NPF will waive its preferential right to contract renewal in 1993, ensuring competition by other interested parties in bidding on concession operations in Yosemite.

NPF's role in this sale is consistent with the Foundation's charter from Congress to support and preserve America's parks for future generations. It also demonstrates how the National Park Foundation has grown and changed over the last two decades to meet the ever-increasing needs of the American park system.

Founded in 1967, NPF is a private, nonprofit organization providing private-sector support for the enhancement and improvement of the national park system. The Secretary of Interior serves as chairman and the Foundation's board includes top U.S. business and civic leaders.

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